of publication in the Government *Gazette* is, to my mind, of no material consequence. If a mistake was made it was only in respect of the delay in publishing the earlier notification. The dates on the two notifications made that clear. It could have no fatal or any effect. On 1 January 1970, both came into effect and *ut magis res valeat qua pereat,* P.N. 4 of 1970, the notice of periodic revision, must be regarded as coming into effect immediately before P.U. 39 of 1969, the direction for the levy of the new rents.

The declarations sought are therefore refused as being unfounded in the law.

Application refused.

Solicitors: *Lim Kean Chye & Co.*

VEERASAMY v. BOARD OF MANAGERS OF THE METHODIST NATIONAL TYPE PRIMARY SCHOOL, TELOK DATOH

[O.C.J. (Yong J.) October 13, 1972]

[Kuala Lumpur — Civil Suit No. 451 of 1968]

Employment — Gardener working in school — Whether an "employee" — Termination of service — Education Act, 1961.

The questions for decision in this case was whether a gardener working in a school is an "employee" within the Education Act and whether his services could be terminated by notice.

Held: (1) a gardener, sweeper, or grass-cutter such as the plaintiff though working in a school was not an "employee" within the meaning of the Education Act, 1961;

(2) in this case the plaintiff was not dismissed but his contract of service was terminated by notice.

CIVIL SUIT.

Joginder Singh for the plaintiff.

Chin Yoong Chong for the defendant.

Yong J.: For verbosity and obscurity it would be difficult to find another statement of claim to excel the plaintiff's. He has filed two statements of claims, the amended is no better than the original. When properly understood his claim amounts to no more than a simple claim for damages for wrongful dismissal on various grounds which may be briefly stated as follows:-

(a) the plaintiff claimed that he was an "employee" within the meaning of the Education Act 1961 and as such he was entitled by implication to work until he had reached the retiring age of 60 years unless he was earlier dismissed for disobedience or misconduct, and that as he had not been so dismissed he now claimed damages of $12,898 being wages he would have earned for 9 years and 8 months from August 1, 1965 (date of his alleged dismissal) to March 31, 1975 (date of his retirement at the age of 60 years).

(b) plaintiff's dismissal was "illegal wrongful and/or unjustified."

(c) plaintiff was employed by the Board of managers of the primary school but was dismissed by the board of governors of the secondary school.

(d) plaintiff's dismissal was not properly approved by the board of managers nor confirmed by a subsequent meeting of the board.

(e) both boards were improperly constituted under the Education Act 1961.

(f) plaintiff's misconduct and disobedience had been condoned.

At the trial the plaintiff abandoned his claim for a declaration that his dismissal was "against the principles of natural justice and/or *ultra vires* void inoperative and of no effect and that he still is an employee of the board of managers." He also abandoned his plea that the board of managers and the board of governors were improperly constituted under the Education Act 1961.

It is not in dispute that the primary school and the secondary school were formerly one school known as "Methodist English School, Banting." In 1962 this school was divided into two sections. The primary school section came under the control of a headmaster and the secondary school section under a principal. The school fields, grounds, tuckshops, latrines and other facilities jointly used or shared by both sections were under the paramount control of the principal of the secondary school.

It is a common ground that the plaintiff was employed in the school as a gardener, sweeper, grass-cutter and a daily-rated labourer. He did not get a fixed monthly salary but was paid $3.50 for each and every day he had actually worked.

The first question which the court has to answer is: Was the plaintiff and "employee" within the meaning of the Education Act 1961. Could a person performing such lowly jobs as the plaintiff come within the definition of "employee" under section 2 of the Education Act 1961, the relevant parts of which read:-

"An 'employee' means a person ... employed or actively taking part in work connected with the running or the administration of an educational institution, but does not include a domestic servant or a person engaged in the repair, maintenance or upkeep of premises."

In my opinion a gardener, a sweeper, a grass-cutter or even a lavatory cleaner could not be said to be employed to run or administer an educational institution or actively taking part in the work connected therewith. Plaintiff was employed only to cut the grass and to maintain the cleanliness of the school and its grounds and not to run or administer the school.

By the said definition a domestic servant or a person "engaged in the repair, maintenance or upkeep of the premises" is expressly excluded. "Premises" according to the *English Oxford Dictionary* means "A house or building with its grounds or appurtenances." If this meaning is accepted it would clearly exclude a gardener, sweeper or grass-cutter engaged in the repair, maintenance or upkeep of the school and its grounds.

I therefore hold that a gardener, sweeper, or grass-cutter such as the plaintiff though working in a school

is not an "employee" within the meaning of the Education Act 1961, and the consequential implications relied upon by the plaintiff for his claim do not therefore arise.

The next question is: Was the plaintiff dismissed and if he was not, was his contract of service terminated by notice.

The plaintiff's own witness Mr. Duraisingam who was a member of the board of managers of the primary school testified that plaintiff was not dismissed, but his contract of service was terminated by notice and that plaintiff was paid one month's wages in lieu of notice in addition to the wages due to him. Another witness called by the plaintiff, Mr. John K. Chelliah who was a clerk of the School also confirmed that the plaintiff was not dismissed and that his contract of service was terminated by notice. The defence witness Mr. Vincent Daniel who was the principal of the Secondary School, Mr. S. Paranjothy who was the headmaster of the Primary School and the secretary of the board of managers, and Mr. E. R. S. Boyce a member of the board of managers were all equally emphatic that plaintiff was not dismissed and that his contract of service was terminated by notice. In the agreed consent bundle of documents was the notice (Ex. AB16) issued by the board of managers of the Primary School and served on the plaintiff. It reads:—

"Termination of Service

The Board of Managers has directed me to inform you that your letter dated 4th April '65 was considered carefully by the Board at their meeting held on 29th July 1965 at 6.15 p.m. and they have unanimously decided to terminate your service as on 31.7.65.

I am enclosing herewith the sum of Dollars One hundred and five and cents forty only being one month's wages ($105.40) in lieu of notice."

On the evidence before me I find as a fact that the plaintiff was not dismissed and that his contract of service was terminated by notice. The question whether the alleged dismissal was or was not wrongful or whether his misconduct, insubordination and disobedience had or had not been condoned does not therefore arise. I also find as a fact that the notice terminating the plaintiff's contract of service was given by the board of managers of the primary school with the concurrence of the headmaster of the primary school and that such termination was duly authorised by a meeting held on July 29, 1965 and confirmed at a subsequent meeting held on November 28, of the same year. I am satisfied that the length of notice given in the circumstances of this case was reasonable and sufficient and that the plaintiff's contract of service was properly and legally terminated.

It must be pointed out that a resolution to terminate the plaintiff's contract of service was also passed by the board of governors of the secondary school which held its meeting immediately preceding that of the board of managers and its resolution was subsequently confirmed on November 28, 1965. The resolution reads:—

"*School Gardeners/sweepers.* At this stage Mr. Sam Paranjothy Headmaster of the Methodist National Type Primary School was asked to join the meeting. After careful consideration of Mr. M. Veerasamy's reply to the Board's written warning issued to him on 24th March 1965 (attached) the following resolution was unanimously adopted:

'that Mr. M. Veerasamy's service be terminated on 31.7.65 and that one month's pay be given him in lieu of notice.'"

While giving evidence plaintiff did not impress me to be a truthful witness. He was evasive and prevaricating. He lied about his age by making himself 13 years younger so that he could claim more damages. In his examination-in-chief he claimed he was 50 years of age when in fact he was 63. He denied receiving a letter of warning accusing him of theft of school property, insubordination and disobedience although earlier on in his evidence he had admitted receiving it. He also denied giving a reply. This is what he said:—

"Now I say I did not receive this letter of warning (AB6). I repeat again that I had not received this letter of warning (NB. Ex. AB7 shows that he did)."

"By Court: Did you give a reply to this letter of warning?

Answer: I did not give a reply to this letter of warning (AB6). I did not give reply AB7."

Both these documents (Ex. AB6 and 7) appeared in the Agreed Consent Bundle of Documents. It is clear that plaintiff is not a witness of truth and is unreliable. As a matter of prudence his evidence should therefore be scrutinised with great care and indeed with suspicion. On the question of theft, insubordination and disobedience, I have after examining the whole of plaintiff's evidence and the evidence of the headmaster of the primary school and the principal of the secondary school and their witnesses and observing their demeanour in the witness stand, come to the conclusion that plaintiff did steal school property and was insubordinate to authority and disobedient to orders in not carrying out the work properly assigned to him. I believe these factors have influenced the defendants to terminate the plaintiff's contract of service by giving him one month's wages in lieu of one month's notice.

The suit is dismissed with costs.

Suit dismissed.

Solicitors: *Joginder Singh & Co.; Skrine & Co.*